



STATE OF WASHINGTON

## STATE BUILDING CODE COUNCIL

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### MINUTES STATE BUILDING CODE COUNCIL CONFERENCE CALL

**Date:** September 13, 2002

**Monitor Location:** Davis-Williams Building, Olympia

**Council Members Present:** Stan Price, Vice Chair; Dave Baker; John Cochran; Peter De Vries; Chris Endresen; Rick Ford; John Fulginiti; Bill Misocky; Steve Mullet; Steve Nuttall; Terry Poe; Dave Saunders; Dale Shafer

**Council Members Absent:** Jim Lewis, Chair; Rory Calhoun

**Visitors Present:** Larry Andrews, Dan Sexton, Bob Eugene, Frank Mellas, Joe Brewer, Joe Cook, Terri Hotvedt, Larry Stevens, John Neff, Dwight Perkins, Bill Wright

**Staff Present:** Tim Nogler, Al Rhoades, Krista Braaksma, Patti Thorn, Sue Mathers

#### CALL TO ORDER

The meeting was called to order at 10:17 a.m. by Stan Price, Acting Chair. Stan welcomed everyone, especially John Cochran, the newly appointed Council member representing architects. While this is John's first Council meeting, he has attended numerous Technical Advisory Group (TAG) meetings.

#### REVIEW AND APPROVE AGENDA

The agenda for today's meeting was reviewed. Stan added Public Comment on Items Not Covered by the Agenda as Item 4A. With that addition, the agenda was approved.

## **REVIEW AND APPROVE MINUTES**

The minutes of the July 12 Council conference call meeting were reviewed and approved as written.

## **PUBLIC COMMENT ON ITEMS NOT COVERED BY THE AGENDA**

Tim Nogler called attention to a letter from Charles Mitchel, President of the Plumbing, Heating, Cooling Contractors of Washington State. Dated September 13, 2002 and addressed to Jim Lewis, Chairman of the State Building Code Council, the letter states:

Dear Chairman Lewis:

I would like to take this opportunity to express my concern about the code review process the State Building Code Council has apparently established to review the NFPA 5000 and the IRC. We do believe the Comprehensive Consensus Codes, of which NFPA 5000 is a part, is the most advanced, up to date, fully integrated code set available today, but we do not believe the Washington State review process will do it justice. We strongly recommend you amend your review process to provide an unbiased, fair review of all codes being considered by the State Building Code Council for adoption in Washington State.

We see about six areas in which Washington's process truly gives both the appearance of, as well as, actual bias. Some of these areas could subject some individuals to legal jeopardy.

First, SBCC is establishing two different TAG groups to review the two codes that are in essence competing with each other for your favor. We believe the same experts should look at both codes in order to evaluate them properly and fairly. Having two groups allows two different standards—separate equates with unequal.

Second, the SBCC establishes 'questions to be answered' about the codes. These include appropriate questions taken from statute, but also add six questions that were not discussed or approved by the Council. Who developed these additional questions? Why were they developed outside the open-meeting process? These additional questions appear to be designed to elicit negative responses from the TAG relative to the NFPA 5000.

It would be impossible for a TAG to answer biased questions fairly, so they should not be asked the additional questions.

Third, the State Building Code Council expressly prohibits the TAG from making a recommendation after having reviewed the codes! TAG groups have never before been prohibited from making a recommendation to the Council. Why now?

Fourth how does this review relate to the fact that the State Building Code Council has already made its recommendation on codes to the Governor in the form of a letter asking for support of the 'International Code.' This was done even before the TAG has been appointed, let alone reviewed the NFPA 5000.

Fifth, is there not a serious conflict of interest being allowed by the SBCC? The SBCC allows an individual with an undeniable bias to hand-pick the individuals for the TAG. This individual is an officer of one of the organizations that writes one of the competing codes. There is no question he should not be allowed to make these decisions.

Sixth, representatives of national organizations who develop codes should not be allowed to sit on the Washington State Building Code Council TAG groups.

The bias is clear. These are individuals who are officers of the very organizations who expect the SBCC and the legislature to select their codes. We do not believe any officer of any organization – including NFPA and ICC – should be allowed to participate in TAG deliberations.

Joe Brewer, NFPA/IAPMO, pointed out inaccuracies in James Manson's August 23rd E-mail message to the Council. He said he's unaware of any insurance company currently writing policies that has either increased or decreased rates based on ISO ratings. He also said that newly published codes need not be implemented to qualify for the maximum ISO rating. Rather existing codes may be updated for seismic standards, snow loads, fire protection and flooding concerns and thus qualify for the highest rating. He cited Massachusetts as an example. Another inaccuracy pointed out by Mr. Brewer involves FEMA and disaster mitigation. Mr. Brewer said FEMA replaces building stock as it existed prior to a disastrous event. He also noted that the current Uniform Building Code allows alternate building methods and materials.

Larry Andrews, Andrews Mechanical, raised a concern about TAG membership and voting rights. He said it's important to maintain balance. Larry also discussed a recently constructed building in Spokane that was unable to obtain insurance. He said that he was informed that had it been built to International code standards, it still could not get insurance because it wasn't structurally strong enough according to insurance standards. Larry noted the insurance industry has its own books, which only NFPA follows.

Rick Ford asked Larry to furnish documentation about the building that couldn't get insurance.

Larry Stevens, representing the Mechanical Contractors Association and the National Electrical Contractors Association, said his clients share many of the concerns expressed by Charles Mitchel. He asked to receive a copy of Mr. Mitchell's letter. Larry also asked whether local jurisdictions can adopt different codes locally than those adopted statewide by the Legislature as recommended by the Council. Stan said that question will be addressed later, under agenda Item #7.

## **INTERPRETATION REQUESTS**

Krista Braaksma said the interpretation request prohibiting duct tape was hand-carried to the Spokane meeting in June. There it was tabled, pending input from Dale Shafer and Terry Poe, as well as review by the Energy Code TAG. After discussion at the July 25 meeting, the TAG determined that current language warrants further examination and potential amendment. Thus the TAG is currently working on amendatory language to make the prohibition of duct tape more clear. During the interim, Revised Draft Interpretation No. 02-June 01 basically quotes current code language, that allowable tapes are those used in accordance with their listing and the manufacturer's installation instructions. And duct tape is prohibited from use any place other than on ducts entirely within the conditioned space of a building.

## **Motion #1:**

**Dale Shafer moved to adopt Interpretation No. 02-June 01, with an amended second sentence to the answer, to read as follows: “Unlisted ~~D~~uct tape is ~~not an allowable tape and~~ is permitted only on ducts entirely within the conditioned space of a building.” Dave Baker seconded the motion.**

Dave Saunders spoke in support of the amendment. Since there is no definition of “duct tape” in code, Dave Baker asked for confirmation that the original intent was to eliminate the use of cloth, unlisted duct tape. Terry Poe said he believes it was simply to eliminate the use of a cheap grade of duct tape that doesn’t stick. Steve Mullet asked for rationale for the distinction between conditioned and unconditioned space. Dale and Stan both said it’s heat loss, wasted in unconditioned spaces, such as crawl spaces and attics, but contributing to the livability of conditioned spaces.

**The question was called for. The amended interpretation was unanimously adopted.**

Dave Saunders asked if the Energy Code TAG will continue to work the issue. Stan confirmed that a subgroup of that TAG is working on developing proposed amendatory language.

Larry Andrews asked if one can use tape on metal to metal connections with three screws. Dale said his interpretation of Council action is that it specifically avoids ruling on a particular product. Rather it’s a generalized ruling that allows the use of a product if it’s listed and installed in accordance with the manufacturer’s recommendation in the listing. The burden of proof is on the manufacturer and installer, not on the Council or the building official. Therefore he said if Larry wants to use a product, he must prove that product is manufactured, listed and tested for that usage.

Larry asked if Interpretation No. 02-June 01 is enough proof. Dave Saunders pointed out the statement in Krista’s memo of August 29: “It is important to note that the Council has no authority to grant product approval.” Stan agreed, saying it’s a local jurisdiction’s decision whether or not a product is used in accordance with the manufacturer’s installation instructions. The Council can only inform local jurisdictions what the code says, as the interpretation does. Enforcement is at the local level.

## **TAG REPORTS**

### **Elevator Shaft Pressurization TAG**

Al Rhoades said the Elevator Shaft Pressurization TAG found that mechanically pressurized elevator shafts provide a fire-life safety equivalent to elevator lobbies. That conclusion includes a proviso that buildings be completely sprinklered and that stair shafts also be pressurized. Al said excellent technical discussion among TAG members resulted in three proposed amendments. The first amendment adds an exception to

Section 403.7 providing that if elevator shafts are pressurized in accordance with Section 905, elevator lobbies are not required. The second amendment adds an exception to Section 905.2.1, incorporating design provisions for shaft pressurization that have been enforced by the City of Seattle for some time, modified for statewide application. The final amendment, to Section 1004.3.4.5, amends the existing state amendment, exempting elevator lobbies in fully sprinklered buildings where both the elevator and stair shafts are pressurized. Al said the question before the Council now is whether or not to enter rulemaking to adopt these changes into the 1997 Uniform Building Code. If the Council decides to adopt the changes, the proposed rule will be filed, public hearings will be held in November, and the Council will vote on whether to file a permanent rule also at the November meeting.

Given time constraints for code filing and public hearings before the end of the year, Tim said Council action was planned for today. Dave Saunders then asked that Building, Fire and Plumbing Codes Committee action be taken simultaneously with Council action. Stan and Tim confirmed that simultaneous action can be taken.

#### **Motion #2:**

**Bill Misocky moved that both the Building, Fire and Plumbing Codes Committee and the State Building Code Council accept the Elevator Shaft Pressurization TAG recommendation and enter rulemaking to adopt its proposed code changes. John Cochran seconded the motion. Stan asked that any Council members objecting to a simultaneous vote let him know. No one raised an objection.**

Dave Baker asked about TAG membership and whether its recommendation was unanimous. Al said Jon Siu, the lead engineer with the City of Seattle, chaired the TAG. Other members included Frank Mellas, Sound Investigative Engineers, who introduced the issue; John Cochran; Sue Alden; Dave Saunders; Becky Ernstes, a technical specialist in L&I's Elevator Division; Lee Kranz, City of Bellevue; Bill Lehner, Assistant Fire Marshal with the Bellevue Fire Department; Dave Barber, DuPree Building Specialties of Spokane. Al said there was initial consensus to move forward, with the exception of Frank Mellas and Dave Barber. At a subsequent TAG meeting, after discussion of technical questions with substantial input from City of Seattle technical expert John Haig and John Cochran, Frank and Dave concurred with other TAG members. Steve Nuttall, in response to Dale, said the fire service supports the TAG recommendation. John Cochran added that John Haig from the City of Seattle was instrumental in creating Seattle's amendments.

**The question was called for. Motion #2 was unanimously adopted.**

### **Energy Code/High-Rise Residential**

Stan said the Energy Code TAG has met five times, following a Council emergency rule addressing WSEC application to high-rise, multifamily residential construction. At the last meeting, a consensus recommendation for Chapter 6 modification (prescriptive path for all R-1 construction) was reached. Staff is compiling a packet of information based on that modification for review at the Council's October meeting. Stan said the goal is to approve that modification at the October meeting, then hold a public hearing in November, followed by a work/executive session also at the November meeting at which the Council will decide whether or not to enter into permanent rulemaking. Stan called attention to expiration of the 120-day life of the current emergency rule at the end of October. Therefore he said that rule will likely have to be readopted at the October meeting.

Stan added that also to be considered at the Council's October meeting is resolution of the duct tape issue discussed above.

### **Code Overview TAGs for the IRC and NFPA 5000**

Stan said meetings have been scheduled for next week, on September 19 and 20, at the Des Moines City Hall to review the IRC. Subsequently similar meetings will be held to review the NFPA 5000. Tim said it began with an offer from the National Fire Protection Association (NFPA) to provide training and information on their new NFPA 5000 building code. That offer was accepted at the July Council meeting. It was decided then to compile a TAG, based on existing TAGs, to participate in that review, as well as a TAG to review the IRC. Since the IRC includes building, fire, plumbing, mechanical and energy codes, the TAG reviewing the IRC will report to a combined codes committee encompassing both the Building, Fire and Plumbing Codes Committee, chaired by Dave Saunders, and the Mechanical, Ventilation and Energy Codes Committee, chaired by Stan Price. Dave and Stan will coordinate both the TAG workplans and membership. Tim said that, under Council bylaws, TAGs may be established by the Council or by standing committee chairs.

Tim said a presentation will be made by the International Code Council on the IRC on September 19, followed by a question and answer period. Then the agenda for September 20 includes review of questions in the workplan to help direct the TAG toward findings. Tim said there was general agreement at the July Council meeting that the product of the TAG should be findings. Potentially the report of findings would transfer from the TAG to the Combined Codes Committee, to the Council at its October meeting.

Presently three meetings are being discussed with NFPA about their NFPA 5000 building code. They are potentially set for October 8 for a presentation by Robert Soloman about fire-life safety issues, October 29 for a presentation by Bonnie Manley about structural issues, and November 7, when the workplan will reviewed and findings established.

Tim said the intent of TAG work is to gather information and provide it to the Council in the form of a report based on findings, to assist the Council in discussions with the Governor's Office and the Legislature.

At this time, TAG members have not been appointed. Everyone participating in existing TAGs has been notified of next week's meetings. The first order of business at next Thursday's meeting is the appointment of members. Dave Saunders added that names from various groups have been compiled, especially from individuals or groups expressing interest in these codes. Stan noted the extensive list of interest groups on the August 29 notice. In view of room occupancy constraints, he asked groups to elect a primary and an alternate representative. Dave Baker asked if there's a size constraint on TAG membership. Stan answered that a maximum limit has not been established, to his knowledge. However the capacity of the meeting location and workability of the group are important considerations. Dave Baker then asked if a maximum TAG membership were imposed, if it would be determined by the chairperson appointing members. Stan agreed. Dave Saunders said he and Stan discussed a maximum limit at length and decided to postpone that issue, dealing with it if and when it has to be dealt with. Dave Baker said he's concerned, as a Council member, with knowing TAG membership representation and how large consensus/dissent is, to formulate an informed decision. Chris Endresen agreed that information is very important. Stan assured them staff will write TAG reports to include such information.

Bill Misocky asked for confirmation that whoever attends the September 19 meeting will represent one of the 39 interest groups listed on the goldenrod August 29 notice. Dave Saunders said some groups have submitted written requests for representation to Council staff. Stan encouraged such written requests prior to the meeting. He said interested parties are not confined to just the groups listed on the meeting notice.

Tim pointed out that the list of interest groups on the August 29 notice was compiled from existing TAGs. Notice of these meetings was sent to all existing TAG members. Thus Council staff expects existing TAG membership to form the base for the IRC and NFPA 5000 TAGs. Tim said the question is: Of these groups and other groups without a representative that attend the meeting, will alternates be named to attend in the absence of the primary member?

Dale asked if he sends 150 mechanical engineers, if all will be voting members. Dave Saunders said he and Stan are asking for one primary representative and one alternate representative for each interest group. It's important to note that the meeting is an open meeting, which anyone can attend. However, if there are space limitations, access may be restricted to one primary representative and one alternate representative of each group. Stan noted that the quality of the information and how well that information is presented to the TAG is more important than how many times the same information is provided. Rather than providing **a finding**, Stan predicts **the findings** to be the result of TAG work. He doesn't expect a consensus recommendation. Thus the question of who does and who does not vote on the TAGs may not be important.

Dan Sexton said that Charlie Mitchell raised some good points in his letter, previously discussed by Tim. He asked if the Council will address those points. Stan welcomed Council action. Dale asked who will chair the TAGs. Stan answered he and Dave Saunders will cochair meetings, since all codes are involved. However he has a conflict on September 19 and 20. Thus Stan asked Peter De Vries to cochair the meetings on his behalf. Pete agreed to do so. Tim added that having a facilitator or private consultant at the meetings was discussed and discarded after Art O'Neal, previously used, was not available.

Dave Saunders said Council members need more time to digest and deliberate about Mr. Mitchell's letter. Dale asked how such questions as "does the IRC permit the use of modern technical methods, devices and improvements" will be answered. Dave Saunders said he anticipates a "yes" or "no" answer with supporting comments. However the final product is the decision of the TAG. As Stan suggested, there will probably be a number of findings rather than one unanimous finding.

Dave Baker suggested that each interest group provide a written response to each question raised in the two workplans at the conclusion of the final meeting. Dave Saunders responded that would be very helpful.

Joe Brewer asked how the Council will use the information provided by the TAGs. Stan noted the Council's job is recommending code adoption to the Legislature. While there is no specific agenda item at a later meeting planned at this time, the information will be helpful for all future Council meetings in its deliberations about code adoption.

Frank Mellas asked when the TAG members of the NFPA 5000 Building Code TAG will be appointed. Stan said it's his understanding that it's virtually the same group as for the IRC. He expects that interest groups want the same representatives on both TAGs. Dave Saunders agreed. Groups have indicated to him that they'll have one representative for both. Since meetings on the NFPA 5000 building code will occur later, Dave said a written list of TAG members may precede the first meeting on that code. Another alternative is appointment of TAG members at the first meeting. It hasn't been decided yet. He doesn't anticipate a cutoff date other than the meeting date. Frank indicated he is interested in being a member of the NFPA 5000 Building Code TAG. Thus Dave asked him to submit a written request to staff.

Dave Baker asked to have Kraig Stevenson's presentation of the IRC video taped, since he doesn't expect to be able to attend that meeting. Dave Saunders asked that the presentation on the NFPA 5000 building code also be video taped. Tim said arrangements will be made.

Larry Andrews, noting that the IRC includes plumbing, asked how that correlates with the previous Council decision to recommend the IAPMO plumbing code. Stan answered that he sees no conflict. He said that a simple review of the IRC is planned for a fact-finding report. There will be no TAG recommendation to the Council. Dave Saunders agreed.



## **LOCAL ADOPTION OF THE IRC**

Tim said this issue doesn't require a Council decision today. It's strictly for-your-information (FYI).

The Council has not approved the IRC as a local ordinance, because it hasn't been requested to do so. However Spokane County is seriously considering adopting such an ordinance. Thus the Council could potentially review it in October.

For the benefit of new Council members, Tim said the Council is obligated under law to review local ordinances that pertain to one- to four-unit residential buildings. The process is triggered by the local government sending the Council such ordinances after local adoption. In addition, the Council may preapprove local ordinances for adoption in other areas of the state.

Dale asked if the county commission has to adopt a local ordinance before the Council can review it. Can it be sent as a draft for preapproval? Tim answered that according to Council procedures in WAC, the Council has to review a locally adopted ordinance. That's true even for preapproval. He said there is an option for a preliminary review with comments. However, past Councils have been reluctant to do that.

Then Dale asked if the Council has to approve Spokane County's adoption of the International Building Code, if they chose to approve it. Tim said the response to Spokane County is not intended to address that question. His understanding is that the state does not have authority to make a decision whether a local amendment to the building code does or does not meet the intent of the state building code. Local governments may amend the state building code as long as the amendment is more restrictive than the minimum state building code.

Dale expressed concern that given the state's code indecision, municipalities may take individual code adoption action. Therefore he suggests Council guidance to municipalities may be in the state's best interest. Dave Baker agreed with Dale. However he said the Council letter to the Legislature recommending the adoption of certain codes gave such direction. The Legislature makes the decision, and it hasn't done so. Dale asked who decides whether local amendments are more or less restrictive than state law. Dave Saunders answered that such decisions are made by the county commission of the appropriate county. Larry Stevens asked about the letter Dave Baker referred to. Tim said it's a letter dated July 12, 2002 recommending codes for adoption in Washington State to Governor Locke. With the exception of Bill Misocky, there was Council consensus to send that letter.

John Fulginiti referred to Ken Carlson's letter of August 6 in which he says, "increasingly more jurisdictions are allowing the use of the International Building Codes by applying Uniform Building Code Section 104.2.8." He asked Dave Saunders if that practice is occurring. Dave answered that practice is occurring, when alternative methods and materials are considered. If such alternates are appropriate, they are approved. Dave

said he knows of half a dozen local jurisdictions that have approved International codes. Dave offered to ask WABO for any tally it may have. John requested that Dave do so. Dave said there's a quarterly WABO meeting on October 17 and 18 where he can raise the issue. Dale, speaking on behalf of the design community, said the practice is very widespread.

Steve Nuttall said that historically alternate methods of construction have always been looked at, as well as other code providers looked to for direction. So this is not a new practice. He would be interested, however, in whether the alternates are wholesale or piecemeal adoptions. He suspects the latter is more common, for a specific issue. He asked Dave Saunders for confirmation. Dave answered that he's aware of both. He'll also ask WABO about that. John Cochran said that he's been told that as an architect he can use one or the other in its entirety, as opposed to mixing and matching. Dale said he agrees with that. Joe Brewer asked for a list of those jurisdictions using the International codes. Dave Saunders said he'll try to get such a list in October.

Steve Nuttall reminded Council members that the Washington Survey and Ratings Bureau is a privately held company that serves some of the insurance industry. The fire service has historically been involved with them because they rate fire departments. Steve said insurance premiums in communities may be impacted by the ratings given fire departments.

## **STAFF REPORT**

Tim said to meet the time constraints for rulemaking for the energy code under the Administrative Procedures Act (APA), the November 22 public hearing has to be changed to November 26, the Tuesday two days before Thanksgiving, or November 27, the Wednesday one day before Thanksgiving. Tim said the deadline for a decision is December 1.

### **Motion #3:**

**Dave Baker moved that the November 22 Council meeting be held on Tuesday, November 26. Dave Saunders seconded the motion.**

### **Motion #4:**

**John Fulginiti moved that the hearing be held on Wednesday, November 27.**

A count of members indicated that two members have conflicts on each day.

**Dave Baker called for the question of whether or not to hold the meeting on November 26. The motion carried, 5 aye to 3 nay.**

Tim said that Rory Calhoun has been in the hospital, battling an infection. A get-well card will be sent to Rory hoping for a speedy recovery. In addition, Tim said a letter will be drafted to Sue Alden, the longest-term Council member, in appreciation of her service. That letter will be brought to the October meeting for members' signatures.

Tim concluded by saying the next Council meeting is October 11 at the Marriott Hotel, SeaTac. Notice for that meeting will be distributed at the end of this month.

Lacking further business, Stan adjourned the meeting at 12:29 p.m.